



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

FEB 1 0 2006

Mark Ferrandino, Treasurer
Colorado Democratic Party
777 Sante Fe Drive
Denver, Co 80204

RE: MUR 5702
Colorado Democratic Party and
Mark Ferrandino, in his official
capacity as treasurer

Dear Mr. Ferrandino:

On February 3, 2006, the Federal Election Commission found that there is reason to believe that the Colorado Democratic Party and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(1), (2), (4) and (8), and 2 U.S.C. § 441b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 102.5(a), 104.10(b)(4) and 106.5(a), regulations promulgated pursuant to the Act. These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information. The Final Audit Report on the Colorado Democratic Party, which is dated September 7, 2005, serves as the Factual and Legal Analysis.

In regard to the Factual and Legal Analysis, specifically the section relating to the non-federal funding of federal activity, the possible non-federal overfunding amount has decreased by \$550,903 due to a miscalculation of several shared expenses. Initially, these expenses were not identified correctly as having a component being paid from Colorado Democratic Party's federal account which resulted in an inflated overfunding amount. The revised overfunding amount is \$2,631,815 instead of \$3,182,718. This letter, which describes the revised overfunding amount, amends the Factual and Legal Analysis.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

27044160019

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis

27044160020

Report of the Audit Division on the Colorado Democratic Party

January 1, 2001 - December 31, 2002



27044160021



Report of the Audit Division on the Colorado Democratic Party

January 1, 2001 - December 31, 2002

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The Colorado Democratic Party is a state party committee headquartered in Denver, CO. For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**

○ Contributions from Individuals	\$ 800,930
○ Contributions from Political Committees	205,909
○ Transfers From Affiliated Party Committees	2,521,503
○ Transfers From Non-federal Account for Joint Activity	3,447,566
○ Other Receipts	93,512
○ Total Receipts	\$ 7,069,420
- **Disbursements**

○ Operating Expenditures	\$ 6,681,993
○ Transfers to Affiliated Party Committees	24,025
○ Coordinated Expenditures	293,312
○ Refund of Contribution	2,500
○ Other Disbursements	10,000
○ Total Disbursements	\$ 7,011,830

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)
- Receipt of Prohibited Contribution (Finding 3)
- Disclosure of Disbursements (Finding 4)
- Non-federal Funding of Federal Activity (Finding 5)

¹ 2 U.S.C. §438(b).

Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Changes to the Law	1
Part II. Overview of Committee	
Committee Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	4
Finding 2. Disclosure of Occupation/Name of Employer	7
Finding 3. Receipt of Prohibited Contribution	8
Finding 4. Disclosure of Disbursements	10
Finding 5. Non-federal Funding of Federal Activity	11

27044160023

Part I

Background

Authority for Audit

This report is based on an audit of the Colorado Democratic Party (CDP) undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The disclosure of occupation and name of employer.
2. The disclosure of disbursements, debts and obligations.
3. The disclosure of expenses allocated between federal and non-federal accounts.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 6, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect prior to November 6, 2002.

Part II

Overview of Committee Committee Organization

Important Dates	Colorado Democratic Party
• Date of Registration	September 16, 1982
• Audit Coverage	January 1, 2001 – December 31, 2002
Headquarters	Denver, CO
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Five Federal and Ten Non-Federal Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Shawn O'Buckley
• Treasurer During Period Covered by Audit	Lawrence N. Beer
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Volunteer Staff and Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2001	\$ 26,127
o Contributions from Individuals	800,930
o Contributions from Political Committees	205,909
o Transfers from Affiliated Party Committees	2,521,503
o Transfers from Non-federal Account	3,447,566
o Other Receipts	93,512
Total Receipts	\$ 7,069,420
o Operating Expenditures	6,681,993
o Transfers to Affiliates	24,025
o Coordinated Expenditures	293,312
o Refund of Contribution	2,500
o Other Disbursements	10,000
Total Disbursements	\$ 7,011,830
Cash on hand @ December 31, 2002	\$ 83,717

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

CDP misstated receipts, disbursements, and cash balances for calendar years 2001 and 2002. In response to the interim audit report, CDP filed amended reports that corrected the misstatements. (For more detail, see p. 4)

Finding 2. Disclosure of Occupation/Name of Employer

CDP did not adequately disclose occupation and/or name of employer for 29% of contributions from individuals itemized on its disclosure reports. Furthermore, evidence of "best efforts" to obtain, maintain, and submit the information was not available. In response to the interim audit report CDP attempted to obtain the necessary information. A copy of a letter requesting the information and a log sheet documenting which contributors received the letter were submitted along with amended reports containing the information obtained.

(For more detail, see p. 7)

Finding 3. Receipt of Prohibited Contribution

CDP received a \$10,000 contribution from the non-federal account of a non-connected political committee. In response to the interim audit report, CDP submitted documentation showing that the contribution had been refunded but not in a timely manner. (For more detail, see p. 8)

Finding 4. Disclosure of Disbursements

CDP did not disclose an adequate purpose for 28 coordinated expenditures in support of three federal candidates, which totaled \$263,597. Also, a sample review of allocable expenditures revealed that CDP did not adequately disclose shared disbursements. The majority of these errors occurred because CDP did not report the non-federal portion of these expenditures on Schedules H4 (Joint Federal/Non-Federal Activity Schedule). Finally, CDP disclosed disbursements with inadequate purposes, incorrect dates, and missing addresses. In response to the interim audit report, CDP filed amended reports that corrected the disclosure errors. (For more detail, see p. 10)

Finding 5. Non-federal Funding of Federal Activity

A review of expenditures made from federal and non-federal accounts indicated that the non-federal account potentially paid more than its share of allocable expenses by \$8,436,101. Media expenditures made up a significant portion of this over funding. Documentation such as invoices, scripts or copies of advertisements were not made available or did not demonstrate that these media expenditures were for shared expenses. In addition, CDP made disbursements from its non-federal accounts that appeared to be either federal or allocable expenses. In response to the interim audit report, CDP provided additional documentation that reduced its potential liability to the non-federal account to \$3,182,718. (For more detail, see p. 11)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

CDP misstated receipts, disbursements, and cash balances for calendar years 2001 and 2002. In response to the interim audit report, CDP filed amended reports that corrected the misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements) or Schedule H4. 2 U.S.C. §434(b)(1), (2), and (4).

Facts and Analysis

The Audit staff reconciled CDP's reported activity to its bank records for calendar years 2001 and 2002. CDP was not able to provide us with work papers to support its reported figures. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements, and the ending cash balances. The succeeding paragraphs explain why the differences occurred, if known.

2001 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2001	\$306,115	\$26,127	\$279,988 Overstated
Receipts	\$556,198	\$675,546	\$119,348 Understated
Disbursements	\$614,253	\$635,017	\$20,764 Understated
Ending Cash Balance @ December 31, 2001	\$248,060	\$66,656	\$181,404 Overstated

Opening Cash Balance – 2001

The beginning cash on hand was overstated by \$279,988 due to prior period misstatements which could not be explained by CDP personnel.

Receipts – 2001

The understatement of receipts was the net result of the following:

• Unreported receipts from Gordon & Schwenkmeyer, Inc., a fundraising firm	\$ 99,802
• Unreported receipts from Political Committees	10,200
• Unreported Offset of Operating Expense	5,784
• Underreporting of Transfers from Non-federal Accounts	4,653
• Unexplained difference	- 1,091
Total understatement	<u>\$ 119,348</u>

Disbursements – 2001

The understatement of disbursements was the net result of the following:

• Unreported Legal expenses	\$ 20,000
• Unreported Fundraising expenses	1,725
• Other Unreported expenses	1,492
• Unexplained difference	- 2,453
Total understatement	<u>\$ 20,764</u>

Ending Cash Balance – 2001

The \$181,404 overstatement of the closing cash on hand was the net result of the misstatements described above.

2002 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2002	\$305,278	\$66,656	\$238,622 Overstated
Receipts	\$5,413,294	\$6,393,874	\$980,580 Understated
Disbursements	\$5,448,495	\$6,376,813	\$928,318 Understated
Ending Cash Balance @ December 31, 2002	\$270,077	\$83,717	\$186,360 Overstated

Opening Cash Balance – 2002

As a result of the prior year's misstatement and an unsupported change in the cash on hand balance for January 1, 2002, as compared to the ending cash on hand for December 31, 2001, the beginning cash balance was overstated by \$238,622.

Receipts – 2002

The understatement of receipts was the result of the following:

• Underreporting of Transfers from Non-federal Accounts	\$ 463,012
• Unreported receipts from Political Committees	262,289
• Unreported receipts from Gordon & Schwenkmeyer, Inc.	112,700
• Unreported Receipts from Individuals	85,650
• Unreported Offset of Operating Expense	20,927
• Unexplained difference	36,002
Total understatement	<u>\$ 980,580</u>

Disbursements – 2002

The understatement of disbursements was the result of the following:

• Math Error (reported \$343 instead of \$343,000)	\$ 342,657
• Unreported Transfers to Non-Federal account	231,200
• Unreported Media expenses	96,696
• Unreported Payroll and Taxes	88,320
• Unreported payments to Voterweb for website hosting	70,000
• Other Unreported Operating Expenses	38,040
• Unreported Printing expenses	22,581
• Unreported Telemarketing payments	22,289
• Unreported Rental Car expenses	10,225
• Unexplained Difference	+ 6,310
Total understatement	<u>\$ 928,318</u>

Ending Cash Balance – 2002

The \$186,360 overstatement of the closing cash on hand was the net result of the misstatements described above.

The majority of the difference between reported and actual receipts is a result of several unreported and under reported transfers from CDP's non-federal accounts (\$4,653 in 2001; \$463,012 in 2002). CDP personnel were unable to explain why these transfers were not reported.

Another large part of the under reported receipts is attributable to unreported contributions from individuals in 2001 and 2002. CDP used a third party fundraising company, Gordon & Schwenkmeyer (GSI), to solicit contributions on its behalf. Contributions received in this manner account for approximately 57% of unreported receipts from individuals. CDP did not report receipts from GSI totaling \$99,802 in 2001 and \$112,700 in 2002. CDP officials were unable to explain why some GSI contributions were not reported.

A large portion of the disbursement understatement was caused by an apparent data entry error. A payment for media consulting in the amount of \$343,000 was reported as a \$343 payment. This error caused reported disbursements to be \$342,657 (\$343,000 - \$343) less than actual disbursements.

The Audit staff discussed this finding with CDP's representatives during the exit conference and provided them with schedules detailing the discrepancies. The representatives stated that corrective amendments would be filed.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CDP amend its reports to correct the misstatements noted above, including its most recent report to show the adjusted cash balance with an explanation that it resulted from audit adjustments from a prior period. In response to the interim audit report, CDP filed corrective amended reports.

Finding 2. Disclosure of Occupation/Name of Employer

Summary

CDP did not adequately disclose occupation and/or name of employer for 29% of contributions from individuals itemized on its disclosure reports. Furthermore, evidence of "best efforts" to obtain, maintain, and submit the information was not available. In response to the interim audit report CDP attempted to obtain the necessary information. A copy of a letter requesting the information and a log sheet documenting which contributors received the letter were submitted along with amended reports containing the information obtained.

Legal Standard

Required Information for Contributions From Individuals. For each itemized contribution from an individual, the committee must provide the contributor's occupation and the name of his or her employer. 2 U.S.C. §434(b)(3)(A) and 11 CFR §100.12.

Best Efforts Ensures Compliance. When the Treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employers; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipts of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

The Audit staff reviewed all contributions from individuals itemized on Schedule A and determined that CDP did not adequately disclose the contributor's occupation and/or name of employer for 90 of the 309 itemized contributions requiring this information. In addition, CDP did not maintain documentation that demonstrated that best efforts were exercised to obtain the missing information.

The Audit staff presented this matter to CDP representatives during the exit conference, who stated that they would attempt to retrieve the information and the amended reports would be filed.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CDP attempt to contact those individuals for whom the required information was missing, in accordance with 11 CFR §104.7, provide documentation of such effort (such as copies of letters to the contributors and/or phone logs of oral requests), and, file amended Schedules A to disclose any information obtained from those contacts. In response to the interim audit report, CDP attempted to obtain the missing information. CDP submitted a copy of a letter requesting contributors' occupation and name of employer and a log sheet listing the letter's recipients. In addition, amended reports were filed disclosing the new information obtained from the letter.

Finding 3. Receipt of Prohibited Contribution

Summary

CDP received a \$10,000 contribution from the non-federal account of a non-connected political committee. In response to the interim audit report, CDP submitted documentation showing that the contribution had been refunded but not in a timely manner.

Legal Standard

Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §441b, 441c, 441e, and 441f.

Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).

2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

The Audit staff reviewed all contributions from political committees and noted a \$10,000 check from The New Democrat Network (NDN), dated April 28, 2002. The check included "THE NEW DEMOCRAT NETWORK" as the accountholder and also included the FEC Identification number for the federally registered committee. However, the check was from a NDN non-federal account and was therefore impermissible. The Audit staff presented this matter to CDP representatives during the exit conference. Representatives for CDP stated that they would examine the contribution and take the necessary action to correct the matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CDP:

- Provide evidence demonstrating that the contribution in question was not prohibited; or
- Refund \$10,000 to New Democrat Network and provide evidence of the refund (copy of the front and back of the negotiated refund check); and
- If funds were not available to make the necessary refund, disclose the refund due on Schedule D (Debts and Obligations Excluding Loans) until funds become available to make the refund.

In response to the interim audit report, CDP provided the Audit staff with a copy of the front and back of the negotiated refund check showing that the contribution from NDN had been refunded on July 14, 2003, over a year from the date of the contribution check.

Finding 4. Disclosure of Disbursements

Summary

CDP did not disclose an adequate purpose for 28 coordinated expenditures in support of three federal candidates, which totaled \$263,597. Also, a sample review of allocable expenditures revealed that CDP did not adequately disclose shared disbursements. The majority of these errors occurred because CDP did not report the non-federal portion of these expenditures on Schedules H4 (Joint Federal/Non-Federal Activity Schedule). Finally, CDP disclosed disbursements with inadequate purposes, incorrect dates, and missing addresses. In response to the interim audit report, CDP filed amended reports that corrected the disclosure errors.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(4)(i)(A).

Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits described above. 2 U.S.C. §441a(d) and 11 CFR §110.7(a)(1) and (b)(1).

Such purchases are referred to as “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits described above.

Facts and Analysis

The Audit staff reviewed all disbursements made for coordinated activity. The review revealed that 28 of the 35 expenditures, totaling \$264,597, incorrectly disclosed payments on behalf of three federal candidates (Feeley, Matsunaka, and Strickland) on Schedules

H4. CDP should have disclosed such disbursements on Schedules F (Itemized Coordinated Party Expenditures).

The Audit staff also reviewed shared expenses and determined that a significant portion of the disbursements were not adequately disclosed. The majority of the errors were caused by CDP only reporting the federal portion of the expense on Schedules H4. The non-federal share of the expenses was paid from the non-federal account and not reported. The remaining errors were due to incorrect amount, purpose, and dates having been reported. The Audit staff presented this matter to CDP representatives during the exit conference. Representatives for CDP stated that they would examine the disbursements in question and amend reports if necessary.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CDP amend its reports to correct the disclosure errors discussed above. In response to the interim audit report, CDP filed corrective amended reports.

Finding 5. Non-federal Funding of Federal Activity

Summary

A review of expenditures made from federal and non-federal accounts indicated that the non-federal account potentially paid more than its share of allocable expenses by \$8,436,101. Media expenditures made up a significant portion of this over funding. Documentation such as invoices, scripts or copies of advertisements were not made available or did not demonstrate that these media expenditures were for shared expenses. In addition, CDP made disbursements from its non-federal accounts that appeared to be either federal or allocable expenses. In response to the interim audit report, CDP provided additional documentation that reduced its potential liability to the non-federal account to \$3,182,718.

Legal Standard

Accounts for Federal and Non-federal Activity. A party committee that finances political activity in connection with both federal and non-federal elections must establish two accounts (federal and non-federal) and allocate shared expenses—those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

Federal vs. Non-federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

Transfers. Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for

paying for shared federal/non-federal election activity. 11 CFR §§102.5(a)(1)(i) and 106.5(g).

Paying for Allocable Expenses. FEC regulations offer party committees two ways to pay for allocable, shared federal/non-federal expenses.

- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
- They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii).

Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H-4 (Shared Expenses). 11 CFR §104.10(b)(4).

Allocation Ratio for Administrative & Generic Voter Drive Costs. State and local party committees must allocate their administrative expenses and generic voter drive costs according to the ballot composition method. Under this method, a committee determines the ratio of federal offices to the total number of federal and non-federal offices expected on the ballot in the next general election in the state or geographic area. 11 CFR §106.5(d)(1) and (2).

Required Records for Reports and Statements. The treasurer of a political committee will maintain records, including bank records, vouchers, worksheets, receipts and bills, in sufficient detail to verify the accuracy and completeness of the information contained in the reports. 11 CFR §104.14(b)(1).

Facts and Analysis

CDP maintained separate federal and non-federal bank accounts. Generally, it paid shared expenses from the federal account and transferred funds from the non-federal account to cover the non-federal share of those expenses. CDP paid allocable expenses for administrative and generic get out the vote (GOTV) expenses from the federal account using a ratio of 22% federal and 78% non-federal and disclosed this ratio on its Schedules H1 (Method of Allocation for Shared Federal and Non-federal Administrative Expenses and Generic Voter Drive Costs).² The Audit staff reviewed disbursements from both the federal and non-federal accounts and found that the non-federal had potentially over funded its share of allocable expenses by \$8,436,101. Much of the

² The actual ratio disclosed on CDP's Schedule H1 shows a Federal Allocation of 22.22%. While reporting shared expenses, CDP routinely rounded down and used 22% as the federal share of administrative type expenses. The affect on the reported amounts is negligible.

amount in question was not sufficiently documented to make a determination on the proper allocation of the expenses.

Among the disbursements questioned were payments to large vendors from CDP's non-federal accounts totaling \$7,051,098 that appeared to be for potentially allocable expenses such as media, postage, consulting, research services and other miscellaneous expenses. Documentation for these expenses which would have assisted the auditors in determining the nature of these expenses was not available. Therefore, the Audit staff considered these disbursements from the non-federal accounts to be potentially for 100% federal activity.

The Audit staff also reviewed disbursements to large vendors paid from CDP's federal accounts, totaling \$3,824,901 including some that were not reported. These expenditures included payments for media, postage, web hosting, legal services, consulting and other miscellaneous expenses. Due to the very limited documentation available for these expenses, they were considered to be potentially 100% Federal. Since many were reported as allocable expenses, \$1,665,670 was added to the potential over funding by the non-federal accounts.

At the exit conference, the Audit staff informed CDP representatives that there were several expenditures from both federal and non-federal accounts which were lacking documentation. Schedules of the contributions in questions were provided. It should be noted that the representatives present during audit fieldwork were not employed by CDP during the period being audited. The representatives indicated that they would attempt to retrieve the documentation necessary for the Audit staff to determine the proper allocation for these expenses.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CDP:

- Provide documentation detailing the nature and purpose of the potentially allocable disbursements to demonstrate that the disbursements paid from the non-federal and federal accounts were not allocable or 100% federal expenses. Absent such a demonstration, CDP was requested to file Schedules B and/or Schedules H4 disclosing as memo entries the allocable expenditures paid from the non-federal accounts.
- Absent a demonstration there has been no over funding by the non-federal account, it was recommended that CDP's federal account reimburse the non-federal account(s) for the amount of any over funding and provide evidence of such reimbursement. If CDP lacked the funds to reimburse the non-federal account(s), then the amount owed was to be disclosed on Schedule D as a debt, until such time that funds were available to make the reimbursement.

- The Audit staff further recommended CDP provide a written description of system changes it has implemented to ensure all allocable disbursements are paid from a federal account.

In response to the interim audit report, CDP submitted documentation for disbursements from both the federal and non-federal accounts for a significant portion of the undocumented disbursements. In addition, CDP filed the requested amended reports. CDP response did not include any narrative addressing the findings or any procedural changes that have been implemented.

With respect to payments from the non-federal accounts, of the \$7,509,641 questioned, CDP provided documentation showing the nature of expenditures totaling \$5,239,540. The documentation indicated that expenditures paid from CDP's non-federal account were for 100% non-federal expenses (\$796,779), the non-federal portion of shared expenses (\$3,455,579)³, or the federal portion of shared expenses (\$987,182). Among the shared expenses were forty payments for media totaling \$3,829,600, thirty-three payments for postage totaling \$292,128, nine payments for consulting totaling \$105,297, seven payments for research totaling \$131,736, and four payments for legal services totaling \$84,000. For the remainder of the \$7,509,641 questioned, \$2,270,101, no additional documentation was provided and they are considered potentially 100% federal. These expenses included thirty-one payments for media totaling \$2,240,045, and three payments for consulting totaling \$30,056.

With respect to disbursements from the federal accounts, CDP submitted documentation detailing several expenditures which the Audit staff was previously unable to evaluate. The documentation demonstrated that disbursements totaling \$3,824,901 were for shared expenses rather than for 100% federal activity. There remains a group of these expenditures that are not adequately documented totaling \$265,694 which are still considered to be potentially 100% federal. These expenditures include seven payments for media totaling \$246,197, seven payments for printing totaling \$7,264, four payments for postage and mailing totaling \$8,112, and one payment for consulting totaling \$4,121. Considering these expenditures to be potentially 100% federal contributes \$206,102 to the non-federal over funding.

As a result of the documentation provided, the Audit staff re-calculated the amount of the over funding by CDP's non-federal account. A revised Non-federal Funding Analysis is presented below.

³ These disbursements were not originally reported by CDP but were included in the amended reports discussed in Finding 4.

Revised Non-federal Funding Analysis		
Description		
Net Transfers made from Non-federal Accounts per Bank Records	\$ 3,216,366	
Less: Non-federal Portion of Allocable Expenditures as Reported	<u>(3,497,033)</u>	
Net (Under funding)/Over funding by the Non-federal Accounts:		\$ (280,667)
Adjustments:		
Federal portion of shared expenses paid from the non-federal account		\$987,182
Potential Federal Expenses paid from the non-federal account		\$ 2,270,101
Reported non-federal portion of disbursements from Federal accounts lacking documentation		\$ 206,102
Adjusted Amount of Potential Non-federal OVER Funding of Allocable Expenses		\$ 3,182,718

As part of its response to the Interim Audit Report, CDP filed amended Schedules H4 to correct the disclosure for several of the items from both the federal and non-federal accounts. The amended reports contained memo entries to disclose a number of transactions from CDP's non-federal accounts that were previously unreported. CDP did not include an amount owed to the non-federal account on its amended Schedules D or its most recently filed report.

It should be noted that the Commission issued subpoenas on August 26, 2005 to several firms requiring the production of the records not provided to date. Additional information will be considered in any subsequent actions taken by the Commission.